IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. Sales Tax Revision Petition No. 88/2007

ACTO, Flying Squad, Ajmer

Versus

M/s Anandeshwar Textiles Pvt. Ltd., Kishangarh, Ajmer

Date of order :: October 11, 2007

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur with Mr. Amit Ratnawat for the petitioner-Revenue

BY THE COURT:

1. Learned counsel for the petitioner-Revenue submits that this case is squarely covered by a judgment of this court in the case of ***Assistant Commercial Taxes Officer, Flying Squad, Bhiwadi Versus M/s. Magadh Plast Private Limited, Bhiwadi***, **S.B. Sales Tax Revision Petition No. 25/2006** decided on 21.09.2007. Accordingly, notices are not being issued and this case is disposed of at admission stage. .

2. The Tax Board by its impugned order dated 13.05.2002 while deciding the appeal No. 1455/99/Ajmer, ACTO Vs. M/s. Anandeshwar Textiles Pvt. Limited, upholding the order of the Deputy Commissioner (Appeals) dated 06.03.1999 held that no penalty could be imposed under Section 78(5) of the Act on the assessee merely because Form ST-18A found alongwith the goods at the time of checking was not completely filled in.

3. Several such revision petitions filed by the Revenue are pending in this court, wherein the penalty under Section 78(5) of the Act was initially imposed by the assessing authority on variety of reasons pertaining to Forms ST-18 / ST-18A / ST-18C prescribed under the RST Rules, 1994. Either such forms were not found at the time of checking or if produced by the driver of the vehicle at the time of checking, such forms were either not filled up completely or the particulars filled up did not tally with the particulars given in the bill and bilty, or such forms were subsequently produced before the Assessing Authority.

4. Recently, the Hon'ble Supreme Court in the case of ***M/s.Guljag Industries Vs. Commercial Taxes Officer*** vide judgment dated 03.08.2007 reported in (**2007) 18 Tax Update 321 = (2007) 9 VST 1 (SC)**, has once again dealt with this controversy after its earlier pronouncement in the case of ***State of Rajasthan & Anr. Vs. D.P. Metals*** reported in **(2002) 1 SCC 279 = (2001) 124 STC 611 (SC)**. In the case of M/s. Guljag Industries Vs. CTO (supra), the Hon'ble Supreme Court remitted the case back to the appellate authority, namely Commissioner (Appeals) [Deputy Commissioner (Appeals)] after making the following observations :-

> *25. In our view, the aforestated judgment in the case of D.P. Metals (supra) has no application to the present case. We are not concerned in the present case with false or forged documents/declaration.* ***In the present case the goods in movement were carried with the blank declaration Form 18A/18C*** *which was duly signed by the assessee. Therefore, as stated above, we hold*

that the goods in movement were carried without the declaration Form 18A/18C. Therefore, Section 78(2)(a) stood attracted. Moreover, in the present case, there were ***no special circumstances indicated by the assessee*** *as to why the forms which were duly signed were not filled in. Therefore, in our view the above judgment in the case of D.P. Metals (supra) has no application to the facts of the present case. As stated, we are concerned with the blank declaration Form 18A/18C which has travelled with the goods in movement, though signed, was left deliberately blank. The declaration Form 18A/18C is like a return under the Income-Tax Act, 1961. The Assessing Officer completes the assessment on the basis of Form 18A/18C.* ***If that form is left blank in all material respects then it is impossible for the A.O. to arrive at the taxable turnover of the assessee****. Therefore, in our view, the judgment of this Court in D.P. Metals (supra) has no application to the present case.*

26. Before concluding, we may mention that in this batch of civil appeals we have civil appeals filed by the Department. These civil appeals relate to cases where specified documents did not accompany the goods in movement. The lead case in that regard is Civil Appeal No.5240 of 2005 Assistant Commercial Taxes Officer v. M/s. Guljag Industries Ltd. filed by the Department. ***We make it clear that our judgment is basically confined to cases where blank/incomplete Form 18A/18C had accompanied the goods in movement. Whatever we have stated above is in the context of the incomplete Form 18A/18C*** *travelling along with the goods in movement. However, Civil Appeal No.5240 of 2005 and such other civil appeals filed by the State (Department) are those cases where the documents were not accompanied the goods in*

movement, like, the bills of sale, bills of transport etc. In Civil Appeal No.5240 of 2005 the facts of which have been reproduced hereinabove, show that the case was confined to ***documents not accompanying the goods in movement. Therefore, the said appeals stand on a different footing. They have nothing to do with incomplete forms*** *travelling along with the goods in movement.* ***These civil appeals*** *filed by the State (Department)* ***shall be decided in the light of the judgment of this Court in D.P. Metals (supra)****. However, cases where goods in movement were accompanied by Form No.18A/18C without duly signed but incomplete in material particulars like description of goods shall be governed by the law discussed hereinabove by us.*

27. For the aforestated reasons, we hold that Section 78(5) of the RST Act 1994 (Section 22A(7) of the RST Act 1954) is the section enacted to provide remedy for loss of revenue and it is not enacted to punish the offender for committing economic offence and, therefore, ***mens rea is not an essential ingredient for contravention of Section 78(2) of the RST Act 1994****. That, the breach of Section 78(2) would attract the levy of penalty under Section 78(5) in cases where the goods in movement have travelled with an incomplete Form No.18A/18C. We accordingly uphold the judgment of the High Court of Rajasthan in Sales Tax Revision No.1023/2002 dated 14.10.03 (which is annexed as page No.1 of the appeal paper book in Civil Appeal No.5197 of 2005 filed by M/s. Guljag Industries v. Commercial Taxes Officer).*

28. In the light of our judgment, we direct the Department to dispose of the cases in accordance with law enunciated by us

hereinabove. Accordingly the matters are remitted back to Commissioner (Appeals) to decide the matter in accordance with law enunciated by us hereinabove. The civil appeals, preferred by the State as well as by the assessees, are accordingly stand disposed of with no order as to costs.

5. In the case of ***State of Rajasthan & Anr. Vs. D.P. Metals*** (supra), the Hon'ble Supreme Court on an earlier occasion has held as under :-

30. Unlike Sant Lal's case [1993] 91 STC 321 (SC) ; (1993) 4 SCC 380 here under Section 78(5) levy of penalty is only on the person-in-charge of the goods. It is he who should have all the requisite documents relating to the title or sale of the goods which are being transported. Penalty under Section 78(5) is leviable under two circumstances. ***Firstly*** *if there is non-compliance with Section 78(2)(a), i.e.,* ***not carrying the documents*** *mentioned in that sub-clause or,* ***secondly, if false or forged documents or declaration is submitted****. This sub-section cannot relate to personal belongings which are not meant for sale but would relate to those types of goods in respect of which documents referred to in Section 78(2)(a) exist or can exist.*

31. Such submission of false or forged documents or declaration at the check-post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. ***Hiding the truth and tendering falsehood would per se show existence of mens rea, even if required****. Similarly where,* ***despite opportunity having been granted under*** *Section 78(5) if the requisite documents referred to in sub-clause (2)(a)* ***are not produced****, even though* ***the same should exist, would clearly prove the guilty***

intent. *It is not possible to agree with the counsel for the respondents that breach referred to in Section 78 (5) can be regarded as technical or venial.* ***Once the ingredients of Section 78(5) are established, after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty. If by mistake some of the documents are not readily available at the time of checking, principles of natural justice may require some opportunity being given to produce the same***. *This provision cannot be read as to imply that the penalty of 30% is the maximum and lesser penalty can be levied. The legislature thought it fit to specify a fixed rate of penalty and not give any discretion in lowering the rate of penalty. The penalty so fixed is meant to be a deterrent and we do not see anything wrong in this. The quantum of penalty under the circumstances enumerated in Section 78(5) cannot, in our opinion, be regarded as illegal. The legislature in its wisdom has thought it appropriate to fix it at 30% of the value of goods and it had the competence to so fix. As held by this Court in Rai Ramakrishna & Others vs. The State of Bihar [1964] 1 SCR 897 at 910: "The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19, courts would naturally be circumspect and cautious" as such there cannot, in the present case, be any valid challenge to the rate of penalty*

provided for in Section 78(5) of the Act.

32. Following the decisions of this Court in cases of Sodhi Transport Co. [1986] 62 STC 381, Delite Carriers [1990] 77 STC 170, Indian Roadways Corporation (Writ Petitions (Civil) Nos. 1555 and 1956 of 1983 decided on April 23, 1986 – Supreme Court), Sarna Transport Corporation (Civil Appeal No. 152 of 1990 decided on July 23, 1996 – Supreme Court) and Tripura Goods Transport Associaiton [1999] 112 STC 609 (SC), ***we hold that the provisons of section 78(5) of the Rajasthan Sales Tax Act, 1994, are valid*** *and the impugned decision of High Court in this regard is not correct. These appeals, except Civil Appeal No. 1321 of 2001, are accordingly allowed. Civil Appeal No. 1321 of 2001 is dismissed. Parties to bear their own costs.*

6. Thus, in view of the binding precedents from the Apex Court, this revision petition is also required to be disposed of by this court by remanding the case back to the Deputy Commissioner (Appeals) for fresh determination in the light of the aforesaid pronouncements of the Apex Court and the law laid down as quoted above. If the case pertains to blank or incomplete Form ST-18 / ST-18A / ST-18C, it would be governed by the decision in the case of ***Guljag Industries*** (supra). All other such cases would be governed by the decision in the case of ***D.P. Metals*** (supra). The Deputy Commissioner (Appeals) shall accordingly decide the appeals after giving opportunity of hearing to the assessee and after holding such enquiry into the documents and material on record as may be considered necessary by him.

7. Since the assessee in these matters had succeeded before the two appellate authorities and the Revenue is in revision petition

before this court and in some of the matters, even the notices have not been served on the respondent assessee in these revision petitions, it is considered expedient while remanding the matter back to the Deputy Commissioner (Appeals) that no recovery of the impugned penalty be made from the respondent assessee in pursuance of the original penalty order, against which the appeal would now be heard by the Deputy Commissioner (Appeals), till such appeals are finally decided by the Tax Board, in second appeal.

8. With the aforesaid observations, this revision petition is disposed of by remanding the matter back to the learned Deputy Commissioner (Appeals). The parties shall bear their own costs. A copy of this order be sent to the concerned assessing authority as well as the respondent assessee. No order as to costs.

(Dr.VINEET KOTHARI),J.

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Item No. 6